

1 BILL NO. S-90-07- 14

2 SPECIAL ORDINANCE NO. S-179-90

3 AN ORDINANCE approving
4 Contract FOR RES. #6165-90,
5 SCHOMBURG DELLS ADDITION (ALT.
6 #1) between BROOKS
7 CONSTRUCTION CO., INC. and the
8 City of Fort Wayne, Indiana,
9 in connection with the Board
10 of Public Works and Safety.

11 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON
12 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

13 SECTION 1. That the Contract FOR RES. #6165-90,
14 SCHOMBURG DELLS ADDITION (ALT. #1) by and between BROOKS
15 CONSTRUCTION CO., INC. and the City of Fort Wayne, Indiana,
16 in connection with the Board of Public Works and Safety, is
17 hereby ratified, and affirmed and approved in all respects,
18 respectfully for:

19 Seal Coat Type 7, drainage &
20 ditching at 1. North
21 Schomburg Drive from the west
22 pavement line of Harris Road
23 to east pavement line of Clear
24 Street. 2. Clear Street from
25 Southern to Northern Terminus.
26 3. Chris Lane from the east
27 pavement line of Clear Street
28 to the west pavement line of
29 Dells Avenue. 4. Dells
30 Avenue from the north pavement
31 line of North Schomburg Drive
32 to Northern Terminus;

33 involving a total cost of Thirty-Seven Thousand One Hundred
34 Sixty-Five and no/100 Dollars (\$37,165.00).

35 SECTION 2. Prior Approval has been requested from
36 Common Council on June 19, 1990. Two copies of said
37 Contract are on file with the Office of the City Clerk and
38 made available for public inspection, according to law.

39 SECTION 3. That this Ordinance shall be in full
40 force and effect from and after its passage and any and all
41 necessary approval by the Mayor.

42 Cletus R. Edmonds
43 Councilmember

44 APPROVED AS TO FORM
45 AND LEGALITY

46 J. Timothy McCaulay
47 J. Timothy McCaulay, City Attorney

CONTRACT NO. 6165-90
SCHOMBURG DELLS ADDITION (COIT)

BOARD ORDER NO. 75-88

WORK ORDER NO. 10,781

THIS CONTRACT made and entered into in triplicate this 27 day of
June, 1991, by and between BROOKS CONSTRUCTION CO., INC.
, herein called CONTRACTOR, and the
CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, acting
by and through the Mayor and the Board of Public Works and Safety,
herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations
hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power,
transportation, miscellaneous equipment, etc., necessary for the
following: To improve by Seal Coat Type 7, Drainage and Ditching:

1. North Schomburg Drive from the west pavement line of Harris Road to east pavement line of Clear St.
2. Clear Street from Southern Terminus to Northern Terminus
3. Chris Lane from the east pavement line of Clear St. to the west pavement line of Dells Ave.
4. Dells Ave. from the north pavement line of North Schomburg Dr. to Northern Terminus.

all according to RES. NO. 6165-90, Drawing No. ,
Sheets , and do everything required by this contract and
the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the
unit price sum of \$ 37,165.00 (Alternate I). In the event the
amount of work is increased or decreased by OWNER, the contract sum
shall be increased or decreased according to the unit price schedule
set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided
herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a
statement of quantities of work completed and/or materials supplied to
the job site as of the end of each month. On or about the 15th day of
the following month, ninety (90%) percent of the value of the work
performed up to the first day of that month (based on the contract
price of labor and materials incorporated in the work) and as estimated
by the CONTRACTOR and approved or revised by the Engineering Department

of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-

tion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Contract No. 6165-90
- b. Instructions to Bidders for Contract No. 6165-90
- c. Contractor's Proposal Dated 5/23/90
- d. Ft. Wayne Engr. Dept. Drawing #
- e. Supplemental Specifications for Contract No. 6165-90
- f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- h. Prevailing Wage Scale.
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond.
- k. Minority/Female Employment Hourly Utilization.
- l. Right-of-Way Cut Permit.
- m. Comprehensive Liability Insurance Coverage.
- n. MBE/EBE Commitment Form.
- o. _____
- p. _____

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insuror acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 8/15/90 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

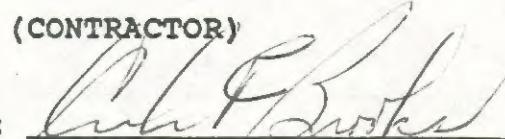
ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

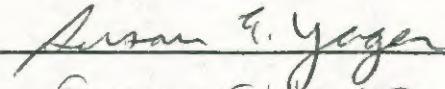
(CONTRACTOR)

BY:



Andrew J. Brooks, Vice President

BY:



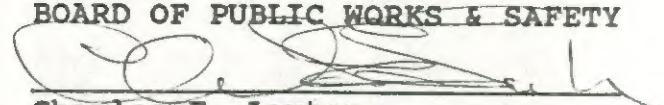
Susan E. Yager, Secretary

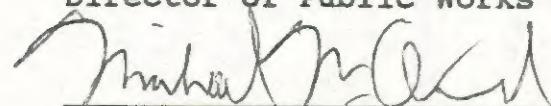
CITY OF FORT WAYNE, INDIANA

BY: P. Helmke

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS & SAFETY


Charles E. Layton
Director of Public Works


Michael McAlexander
Director of Public Safety


Douglas M. Lehman
Director of Administration &
Finance

ATTEST:

Patricia J. Crick
Patricia J. Crick, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State,
this 22nd day of June, 1990, personally appeared the
within named Andrea J. Brooks Susan Ender, who being by me first duly
sworn upon their oaths say that they are the VICE President
and Secretary respectively, of
and as such duly authorized to execute the foregoing instrument and
acknowledged the same as the voluntary act and deed of
for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Sara R Brandman
NOTARY PUBLIC

Sara R Brandman
Type or Print Name of Notary

MY COMMISSION EXPIRES: 3-22-91

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this
27th day of June, 1990,
personally appeared the within named Paul Helmke, Mayor of the City
of Fort Wayne; Charles E. Layton, Michael McAlexander and Douglas
M. Lehman, members of the Board of Public Works and Safety, City
of Fort Wayne, Indiana; and Patricia J. Crick, Clerk of the Board
of Public Works and Safety, City of Fort Wayne, Indiana, to me
personally known, who being by me duly sworn said that they are
respectively the Mayor of the City of Fort Wayne, the Members and
Clerk of the Board of Public Works and Safety of the City of Fort
Wayne, Indiana, and that they signed said instrument on behalf of
the City of Fort Wayne, Indiana, with full authority so to do and
acknowledged said instrument to be the voluntary act and deed of
said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my
official seal.

CAROLYN S. ESCHMANN
NOTARY PUBLIC STATE OF INDIANA
ALLEN CO.
MY COMMISSION EXPIRES JUNE 21, 1991
ISSUED THRU INDIANA NOTARY ASSOC.

Carolyn S. Eschmann
NOTARY PUBLIC

Type or Print Name of Notary

My Commission Expires: _____

Approved by the Common Council of the City of Fort Wayne on day of
_____, 19_____.

Special Ordinance No. _____.



CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

06/20/90

PRODUCER

Insurance Marketplace
1522 Inwood Drive
P. O. Box 15187
Fort Wayne, IN 46885

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY LETTER **A** Commercial Union Ins.

COMPANY LETTER **B**

COMPANY LETTER **C**

COMPANY LETTER **D**

COMPANY LETTER **E**

INSURED

Brooks Construction Co.
6525 Ardmore Ave.
P.O. Box 9560
Fort Wayne, IN
46899

COVERAGE(S)

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH POLICIES.

| CO LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | ALL LIMITS IN THOUSANDS | | | |
|--------|--|---------------|----------------------------------|-----------------------------------|----------------------------------|--------------------------------|-----------|----------|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> OWNER'S & CONTRACTORS PROTECTIVE | AI-R0088912 | 01/31/90 | 01/31/91 | GENERAL AGGREGATE | \$ 2,000 | | |
| | | | | | PRODUCTS-COMP/OPS AGGREGATE | \$ 2,000 | | |
| | | | | | PERSONAL & ADVERTISING INJURY | \$ 1,000 | | |
| | | | | | EACH OCCURRENCE | \$ 1,000 | | |
| | | | | | FIRE DAMAGE (ANY ONE FIRE) | \$ 50 | | |
| | | | | | MEDICAL EXPENSE (ANY ONE PERSON) | \$ 5 | | |
| A | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY | CI-R008915 | 01/31/90 | 01/31/91 | CSL | \$ 1,000 | | |
| | | | | | BODILY INJURY (PER PERSON) | \$ | | |
| | | | | | BODILY INJURY (PER ACCIDENT) | \$ | | |
| | | | | | PROPERTY DAMAGE | \$ | | |
| A | EXCESS LIABILITY <input checked="" type="checkbox"/> OTHER THAN UMBRELLA FORM | CI-DX06822 | 01/31/90 | 01/31/91 | EACH OCCURRENCE | \$ 5,000 | AGGREGATE | \$ 5,000 |
| A | WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY | CI-91-H089968 | 01/31/90 | 01/31/91 | STATUTORY | \$ 500 (EACH ACCIDENT) | | |
| | | | | | | \$ 500 (DISEASE-POLICY LIMIT) | | |
| | | | | | | \$ 500 (DISEASE-EACH EMPLOYEE) | | |
| | OTHER | | | | | | | |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

RE: Resolution No. 6165-90 Schomburg Dells Addition

CERTIFICATE HOLDER

City of Fort Wayne
One Main St.
Fort Wayne, IN

46802

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Bond No.....

Fidelity and Deposit Company

HOME OFFICE

OF MARYLAND

BALTIMORE, MD. 21203

Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That BROOKS CONSTRUCTION COMPANY, INC., P.O. BOX 9560, FORT WAYNE, IN. 46899
(Here insert the name and address or legal title of the Contractor)

as Principal, hereinafter called Contractor, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, with its home office in the City of Baltimore, Maryland, U. S. A., as Surety, hereinafter called Surety, are held and firmly bound unto CITY OF FORT WAYNE, ONE MAIN ST.,
FORT WAYNE, IN. 46802

(Here insert the name and address or legal title of the Owner)

as Obligee, hereinafter called Owner,
in the amount of THIRTY SEVEN THOUSAND ONE HUNDRED SIXTY FIVE AND 00/100

Dollars (\$ 37,165.00), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated MAY 23 1990, entered into a contract with Owner for RESOLUTION NO. 6165-90 SCHOMBURG DELLS ADDITION

in accordance with drawings and specifications prepared by OWNER

(Here insert full name, title and address)
which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

(1) Complete the Contract in accordance with its terms and conditions, or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

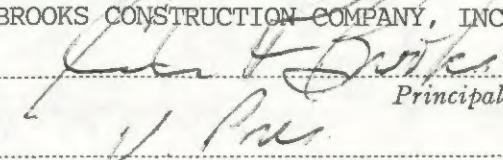
No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this 23RD day of MAY A.D. 19 90.

In the presence of:

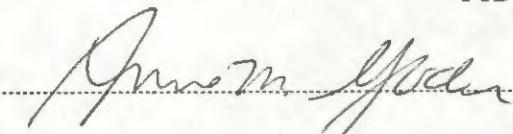
Sara R Boardman

BROOKS CONSTRUCTION COMPANY, INC.


(SEAL)
Principal

Title

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



By 
(SEAL)
Title

N. RICHARD BOERGER
ATTORNEY-IN-FACT

Fidelity and Deposit Company

HOME OFFICE

OF MARYLAND

BALTIMORE, MD. 21203

Labor and Material Payment Bond

Note: This bond is issued simultaneously with Performance Bond in favor of the owner conditioned on the full and faithful performance of the contract.

KNOW ALL MEN BY THESE PRESENTS:

That BROOKS CONSTRUCTION COMPANY, INC., P.O. BOX 9560, FORT WAYNE, IN. 46899
(Here insert the name and address or legal title of the Contractor)

as Principal, hereinafter called Principal, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, with its home office in the City of Baltimore, Maryland, U. S. A., as Surety, hereinafter called Surety, are held and firmly bound unto CITY OF FORT WAYNE,

ONE MAIN ST., FORT WAYNE, IN. 46802

(Here insert the name and address or legal title of the Owner)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of THIRTY SEVEN THOUSAND ONE HUNDRED SIXTY FIVE AND 00/100

(Here insert a sum equal to at least one-half of the contract price)

Dollars (\$ 37,165.00), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated MAY 23 1990, entered into a contract with Owner for RESOLUTION NO. 6165-90 SCHOMBURG DELLS ADDITION

in accordance with drawings and specifications prepared by OWNER

(Here insert full name, title and address)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a sub-contractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

(a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

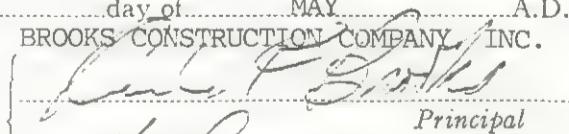
(b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 23RD day of MAY A.D. 19 90.

BROOKS CONSTRUCTION COMPANY, INC.



(SEAL)

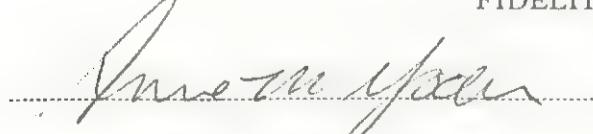
Principal

Title

In the presence of:

Sara R. Brandman

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



By N. RICHARD BOERGER (SEAL)

N. RICHARD BOERGER

ATTORNEY-IN-FACT

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE, BALTIMORE, MD

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by C. M. PECOT, JR., Vice-President, and C. W. ROBBINS, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint N. Richard Boerger, Ronald L. Wightman and Marc Cook, Jr., all of Fort Wayne, Indiana, EACH.....

its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of N. Richard Boerger, et al., dated, June 9, 1986.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 16th day of November, A.D. 1987

ATTEST:



FIDELITY AND DEPOSIT COMPANY OF MARYLAND

C. W. Robbins
Assistant Secretary

By _____

Ch. J. Fader
Vice-President

STATE OF MARYLAND
CITY OF BALTIMORE

SS:

On this 16th day of November, A.D. 1987, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposeth and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.



Say J. Fader
Notary Public Commission Expires July 1, 1990

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 16th day of July, 1969.

RESOLVED: "That the facsimile or mechanically reproduced signature of any Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this 23rd day of *May*, 1990.

044-2974

Christopher T. Hadden
Assistant Secretary

Read the first time in full and on motion by Edmonds,
seconded by Telmiss, and duly adopted, read the second time by
title and referred to the Committee on Legislation (and the
City Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Conference Room 128, City-County Building,
Fort Wayne, Indiana, on July 10, 1990, the 19 day
of July, at 10:00 o'clock A.M. M.E.S.T.

DATED: 7-10-90

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by GiaQuinta,
seconded by Telmiss, and duly adopted, placed on its
passage. PASSED LOST by the following vote:

| | AYES | NAYS | ABSTAINED | ABSENT |
|--------------------|----------|------|-----------|----------|
| <u>TOTAL VOTES</u> | <u>8</u> | | | <u>1</u> |
| <u>BRADBURY</u> | <u>C</u> | | | |
| <u>BURNS</u> | <u>C</u> | | | |
| <u>EDMONDS</u> | <u>C</u> | | | |
| <u>GiaQUINTA</u> | <u>C</u> | | | |
| <u>HENRY</u> | <u>C</u> | | | |
| <u>LONG</u> | <u>C</u> | | | |
| <u>REDD</u> | <u>1</u> | | | |
| <u>SCHMIDT</u> | | | | <u>C</u> |
| <u>TALARICO</u> | <u>1</u> | | | |

DATED: 7-24-90

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. J-179-90
on the 24th day of July, 1990,

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

ATTEST

SEAL

Charles S. Reed
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 25th day of July, 1990,
at the hour of 11:00 o'clock A.M. M.E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 27th day of July,
1990, at the hour of 1:30 o'clock P.M. M.E.S.T.

PAUL HELMKE
PAUL HELMKE, MAYOR

TITLE OF ORDINANCE: Contract for Res. #6165-90, Schomburg Dells Addition (Alt. #1)

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works & Safety

SYNOPSIS OF ORDINANCE: The Contract for Res.#6165-90, Schomburg Dells Addition (COIT) is for the following: Seal Coat Type 7, drainage & ditching at 1. North Schomburg Drive from the west pavement line of Harris Road to east pavement line of Clear Street. 2. Clear Street from Southern to Northern Terminus. 3. Chris Lane from the east pavement line of Clear Street to the west pavement line of Dells Avenue. 4. Dells Avenue from the north pavement line of North Schomburg Drive to Northern Terminus. The Contractor is Brooks Construction Co., Inc.

PRIOR APPROVAL WAS RECEIVED ON 6/19/90.

EFFECT OF PASSAGE: As listed above.

S-90-07-14

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$37,165.00

ASSIGNED TO COMMITTEE:

BILL NO. S-90-07-14

REPORT OF THE COMMITTEE ON PUBLIC WORKS

MARK E. GIAQUINTA, CHAIRMAN
CLETUS R. EDMONDS, VICE CHAIRMAN
HENRY, SCHMIDT, TALARICO

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ APPROVING Contract FOR
RES. #6165-90, SCHOMBURG DELLS ADDITION (ALT. #1) between
BROOKS CONSTRUCTION CO., INC. and the City of Fort Wayne,
Indiana, in connection with the Board of Public Works and
Safety

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) ~~(RESOLUTION)~~

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Mark E. Giacinta

Samuel J. Talarico

Cletus R. Edmonds

D. Schmidt

DATED: 7-24-90

Sandra E. Kennedy
City Clerk